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Failure to instruct on this nonstatutory mitigating factor will deny Defendant his rights under the Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution and the corresponding provisions of the Ohio Constitution.

Respectfully submitted,

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Daniel J. James #0008067

008355

mitigation. Impairment, and not purpose, is the central issue to be considered by the jury in the penalty phase.

Failure to instruct on this nonstatutory mitigating factor will deny Defendant his rights under the Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution and the corresponding provisions of the Ohio Constitution.

Respectfully submitted,

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Daniel J. James #0008067  
Attorney for Defendant  
30 E. Central Pkwy., 13th Flr.  
Cincinnati, Ohio 45202  
513-721-1995

and

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Timothy J. Deardorff #0006308  
Attorney for Defendant  
2368 Victory Parkway  
Suite 300  
Cincinnati, Ohio 45206  
513-872-7900

CERTIFICATE OF SERVICE

I certify that a true copy of the foregoing Motion was hand delivered to the office of the Hamilton County Prosecutor, 4th floor of the Hamilton County Courthouse, this \_\_\_\_\_ day of \_\_\_\_\_, 1994.

008356

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Daniel J. James #0008067  
Attorney for Defendant

008357

COURT OF COMMON PLEAS  
CRIMINAL DIVISION  
HAMILTON COUNTY, OHIO

STATE OF OHIO : Case No. B9400481  
Plaintiff : Judge Ruehlmam  
vs. :  
LEE MOORE : MOTION TO INSTRUCT  
Defendant : JURY AS TO MERGER OF  
: COUNTS OF AGGRAVATED  
: MURDER, MERGER OF  
: SPECIFICATIONS AND FOR  
: DELETION AS AN AGGRAVATING  
: CIRCUMSTANCE OF PRIOR  
: CALCULATION AND DESIGN

Comes now the Defendant, LEE MOORE, by and through his attorneys, and requests this Court, for the purposes of the sentencing phase of these proceedings, to merge the jury's finding of guilty as to Counts 1, 2 and 3 and instruct the jury that this finding of guilt is to one offense of Aggravated Murder.

In addition, the Defendant requests this Court to merge all of the specifications as to the Aggravating Circumstances to which the Defendant was found guilty and instruct the jury in the Recommendation of Sentence instruction that the Aggravating Circumstances which must be considered are as follows:

"The offense was committed while the offender was committing, attempting to commit, or fleeing immediately after committing or attempting to commit kidnapping or aggravated robbery, and the offender was the principal offender in the commission of the Aggravated Murder."

The Defendant also requests this Court to delete from the instructions concerning the Aggravating Circumstances, any reference that the offender:

". . . if not the principal, committed the Aggravated Murder with prior calculation and design."

008358

Respectfully submitted,

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Daniel J. James #0008067  
Attorney for Defendant  
30 E. Central Pkwy.  
13th Flr.  
Cincinnati, OH 45202  
513-721-1995

and

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Timothy J. Deardorff #0006308  
Attorney for Defendant  
2368 Victory Parkway  
Suite 300  
Cincinnati, Ohio 45206  
513-872-7900

MEMORANDUM IN SUPPORT

In support of this request, the Defendant, LEE MOORE, was found guilty in a five Count Indictment, of 3 counts of Aggravated Murder, as follows:

Count 1 - Aggravated Murder - prior calculation and design  
Count 2 - Aggravated Murder - felony murder for Kidnapping  
Count 3- Aggravated Murder - felony murder for Aggravated Robbery

The underlying facts and circumstances as to these three counts are identical and each of the counts address the events concerning the same homicide, that being the death of Melvin Olinger on or about January 14, 1994. Where one homicide results in several different charges of Aggravated Murder, it is appropriate to merge the prior calculation and design count and the felony murder counts together. State vs. Benner (1988), 40 Ohio

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St. 3d 301, State vs. Bonnell (1991), 61 Ohio St. 3d 179, State vs. Brown (1988), 38 Ohio St. 3d, 305.

Case law has also upheld the requirement that differing Specifications alleging differing Aggravating Circumstances should be merged where the Specifications involve the same offense and arose from the same acts. State vs. Wiles (1991), 59 Ohio St. 3d 71, State vs. Benner (1988), 40 Ohio St. 3d 301.

"Accordingly, in the penalty phase of a capital prosecution where two or more aggravating circumstances arise from the same act or indivisible course of conduct and are thus duplicative, the duplicative aggravating circumstances will be merged for purposes of sentencing." State vs. Jenkins (1984), 15 Ohio St. 3d, 164.

Ohio Supreme Court decisions have also held that it is improper to charge as an Aggravating Circumstance that the offense was committed with prior calculation and design where the Defendant is the principal offender, i.e. the actual killer. State vs. Penix (1987), 32 Ohio St. 3d, 369.

Accordingly, the Defendant requests that the jury, in the sentencing phase of these proceedings, is to be instructed as to one Aggravated Murder, as to one set of Aggravating Circumstances as indicated herein, and that these Aggravating Circumstances do not include reference to prior calculation and design.

Respectfully submitted,

\_\_\_\_\_  
Daniel J. James #0008067  
Attorney for Defendant

008360

and

Timothy J. Deardorff #0006308  
Attorney for Defendant

CERTIFICATE OF SERVICE

I certify that a true copy of the foregoing Motion was hand delivered to the office of the Hamilton County Prosecutor, 4th floor of the Hamilton County Courthouse, this \_\_\_\_\_ day of November, 1994.

Daniel J. James #0008067  
Attorney for Defendant

NOTICE OF HEARING

Please take notice that a hearing on the foregoing Motion has been set for the 21st day of November, 1994, before Judge Ruehlman in Court Room #534 at 9:00 A.M., 5th floor of the Hamilton County Courthouse.

Daniel J. James #0008067  
Attorney for Defendant

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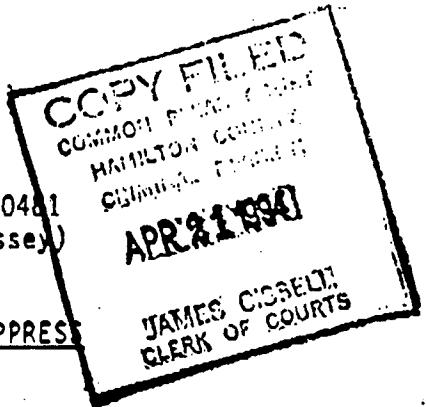


COURT OF COMMON PLEAS  
CRIMINAL DIVISION  
HAMILTON COUNTY, OHIO

LEE MOORE

Defendant

:  
: Case No. B94004a1  
: (Judge Morrissey)  
: MOTION TO SUPPRESS  
:  
:



Comes now the Defendant, Lee Moore, by and through his attorney and moves this Court for an order suppressing the introduction into evidence by the State of Ohio of any and all evidence, including all physical evidence, seized by police officers as a result of the arrest of the Defendant and the subsequent searches that occurred.

As a basis for this request, the Defendant states that this evidence was obtained and seized without a search warrant, without obtaining appropriate consent and in violation of the Defendant's constitutional rights as guaranteed by the Fourth, Fifth, Sixth and Fourteenth Amendments to the United States Constitution.

Respectfully requested,

Daniel J. James, Jr. J-074 8067  
Attorney for the Defendant  
30 E. Central Pkwy., 13 Fl.  
Cincinnati, Ohio 45202  
(513) 721-1995

Timothy J. Deardorff  
Timothy J. Deardorff 1848  
Attorney for the Defendant  
169 E. McMillan Street  
Cincinnati, Ohio 45219  
(513) 241-4030

COURT OF COMMON PLEAS  
CRIMINAL DIVISION  
HAMILTON COUNTY, OHIO

STATE OF OHIO

:

Plaintiff

:

Case No. 940048T  
(Judge Morrissey)

vs.

:

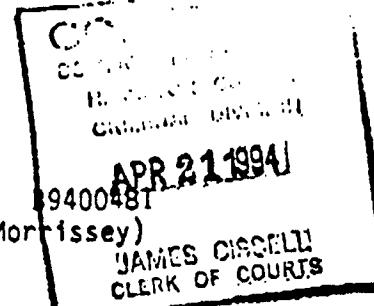
LEE MOORE

:

MOTION TO SUPPRESS  
STATEMENT

Defendant.

:



Comes now the Defendant, Lee Moore, by and through his attorney, and respectfully requests that this Court grant an order suppressing use at trial by the prosecuting attorney of any statement, written, oral or recorded, made by the Defendant herein. As a basis for this request, the Defendant states that these statements were obtained in violation of the Defendant's constitutional privilege against self incrimination and right to due process. Further, the Defendant states that these statements were made without the advice of counsel and in violation of his rights as guaranteed by the Fifth and Sixth Amendments of the United States Constitution.

WHEREFORE, this Defendant requests this Court to suppress the use at trial of any statement made by the Defendant.

Respectfully requested,

Timothy J. Deardorff 1848  
Attorney for the Defendant  
169 E. McMillan Street  
Cincinnati, Ohio 45219  
(513) 241-4030

Daniel J. James J-074 8067  
Attorney for the Defendant  
30 E. Central Pkwy., 13 Fl.  
Cincinnati, Ohio 45202  
(513) 721-1995

COURT OF COMMON PLEAS  
GENERAL DIVISION  
HAMILTON COUNTY, OHIO~~ENTER~~

OCT 31 1994

~~ED J. CASTOLANO JUDGE~~

Administrative Judge

State of Ohio

Case Number B-940481

vs

Entry of Re-Assignment

Lee Moore

It appearing that due to the assigned judge now my  
being heavily engaged in other cases, and a trial date set  
case B-940481 is hereby reassigned to Room 9,  
 Judge Ruehman.

(116)

008364

COURT OF COMMON PLEAS

HAMILTON COUNTY, OHIO

OCT 31 1994

BENEDICT CAROLAN, JUDGE

In Re: DISQUALIFICATION : CASE NO. B-940481

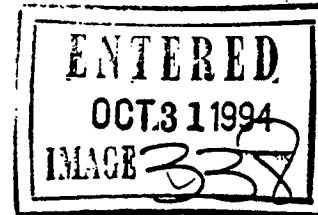
STATE OF OHIO :

-vs-

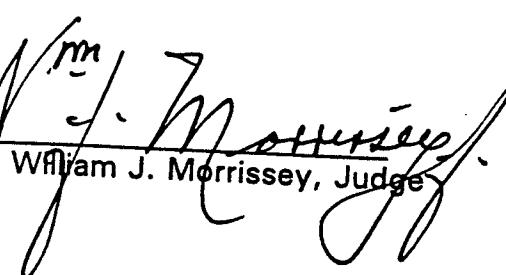
: ENTRY

LEE MOORE :

Defendant :



Pursuant to provisions of Rule 7E, Local Rules of Practice, the undersigned  
hereby disqualifies himself from the above-captioned case for the following  
reasons: Heavily involved in other cases.

  
\_\_\_\_\_  
Judge William J. Morrissey, Judge

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COURT OF COMMON PLEAS  
CRIMINAL DIVISION  
HAMILTON COUNTY, OHIO

STATE OF OHIO, : Case No. B-940481  
Plaintiff, : Judge Morrissey  
v. : REQUEST FOR DISCOVERY  
LEE EDWARD MOORE, :  
Defendant. :

Now comes the Defendant, by and through counsel, and requests discovery of the following items, pursuant to Rule 15, Ohio Rules of Criminal Procedure:

1. Statements of the Defendant and his co-defendants;
2. The prior criminal record, if any exist, of the Defendant and/or his co-defendants;
3. Documents and tangible objects in the State's possession;
4. Reports of any examinations and tests of the Defendant and his co-defendants;
5. Any witnesses' names and addresses and records of any prior felony convictions of each, if any exist; and
6. Disclosure of any other evidence favorable to the Defendant.

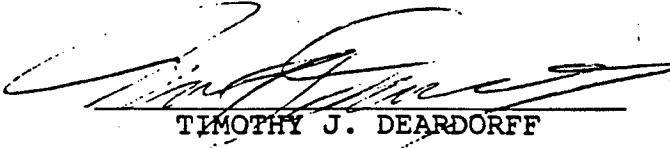
Respectfully submitted,

DANIEL J. JAMES  
Lead counsel for Defendant  
Supreme Court No. 0008067  
30 East Central Parkway  
Cincinnati, Ohio 45202  
(513) 721-1995

TIMOTHY J. DEARDORFF  
Co-counsel for Defendant  
Supreme Court No. 0001848  
169 E. McMillan Street  
Cincinnati, Ohio 45219  
(513) 241-4030

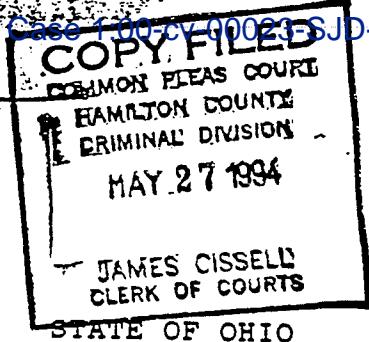
**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Request for Discovery was served upon Joseph Deters, Prosecuting Attorney, 1000 Main Street, Cincinnati, OH 45202 on the same day the notice was filed.

  
TIMOTHY J. DEARDORFF

DEARDORFF & HAAS  
Attorneys At Law  
169 East McMillan  
Cincinnati, Ohio 45219  
(513) 241-4030

008367



COURT OF COMMON PLEAS  
CRIMINAL DIVISION  
HAMILTON COUNTY, OHIO

Case No. B9400481  
Judge Morrissey

Plaintiff

vs.

LEE MOORE

Defendant

Defendant, by and through his attorneys, respectfully moves this court to order that the attached questionnaire be sent to all prospective jurors called on this case.

It is further requested that said questionnaires be mailed by the Clerk of this Court at the expense of the State at least 15 days before trial and that said jurors be instructed to return said questionnaires to the Clerk no later than 7 days before trial.



Daniel J. James #0008067  
Attorney for Defendant  
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1300 American Building  
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(513) 721-1995

and

Timothy J. Deardorff, A.J.J.  
Timothy J. Deardorff #0006308  
Attorney for Defendant  
2368 Victory Parkway  
Suite 300  
Cincinnati, Ohio 45206  
(513) 872-7900

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MEMORANDUM IN SUPPORT

The information derived therefrom will expedite voir dire, insure proper excusal for cause, promote the judicious use of peremptory challenges, and reduce the likelihood of prejudicial error. Typically, in death penalty cases, voir dire is extensive and rather time-consuming. This is obvious given the serious nature involved in proceedings involving the death penalty. The Defendant's guilt or innocence as well as potentially his life rests in the hands of those chosen to sit as jurors. The questionnaire, as such, will benefit both the defense and the State in ensuring that a qualified jury is chosen.

The use of the proposed questionnaire, by providing more detailed information, will assist defense counsel and the prosecution in the jury selection process which, in turn, will help protect the Defendant's right to a fair trial by an impartial jury. This request is designed to facilitate the jury selection by ensuring that more information is available to counsel. Additionally, the advance completion of the questionnaire will benefit both the State and the Defense counsel by allowing a preliminary review of all potential jurors thus limiting voir dire to more specific grounds of questioning. Voir dire on basic information about the venire is eliminated and the jury selection process is expedited through the use of the attached questionnaire.

For these reasons, the Defendant moves this Court to grant this Motion and require those chosen to serve on the special venire

to complete the attached questionnaire. In the alternative, the Defendant requests that this Court hold a hearing in which evidence concerning the need for such expansion of the juror questionnaire can be presented, and through which the Court can decide the acceptability of alternative questions.

Respectfully submitted,

Daniel J. James

Daniel J. James #0008067  
Attorney for Defendant

and

Timothy J. Deardorff Jr. AIT

Timothy J. Deardorff #0006308  
Attorney for Defendant

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Motion was hand delivered to the office of the Hamilton County Prosecutor, 4th floor of the Hamilton County Courthouse, this 27th day of May, 1994.

Daniel J. James

Daniel J. James #0008067  
Attorney for Defendant

and

Timothy J. Deardorff Jr. AIT

Timothy J. Deardorff #0006308  
Attorney for Defendant

008370

PROSPECTIVE JUROR QUESTIONNAIRE

Please answer each question in the following pages as completely and as accurately as you can. Complete answers will save the Court and all parties involved a great deal of time. If you need more space to sufficiently answer any particular question, please use the blank page at the end of the questionnaire.

There are no right or wrong answers to the questionnaire. The only right answers are complete and honest responses to all questions. The purpose in using this questionnaire is threefold. The first is to gain full and honest responses from you without revealing that information to the entire panel of jurors in open court. This will protect the confidentiality of your responses. Second, the questionnaire will spare you the long wait that usually occurs when the attorneys must repetitiously ask all of you the same questions. Finally, the use of this questionnaire provides each side the opportunity to select a fair and impartial jury. Therefore, your full cooperation is of the greatest significance to the administration of justice in this case.

SOME OF THESE QUESTIONS MAY CALL FOR INFORMATION OF A PERSONAL NATURE THAT YOU MAY NOT WANT TO DISCUSS IN PUBLIC; I.E., IN AN OPEN COURTROOM, WITH THE PRESS AND/OR THE PUBLIC PRESENT. IN ANY INSTANCE WHERE YOU FEEL PUBLIC DISCUSSION OF YOUR ANSWER MAY INVADE YOUR RIGHT TO PRIVACY OR MIGHT BE EMBARRASSING TO YOU, YOU MAY INDICATE BY PLACING YOUR INITIALS ALONGSIDE THE NUMBER OF THE QUESTION. THE COURT WILL THEN GIVE YOU THE OPPORTUNITY TO EXPLAIN YOUR REQUEST FOR CONFIDENTIALITY IN A CLOSED HEARING.

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## PROSPECTIVE JUROR QUESTIONNAIRE

## GENERAL BACKGROUND

1. Name, address, (nearest major intersection) age, race, nationality and place of birth.
2. How long have you lived at your current address?
3. How long have you lived in Hamilton County?
4. If you have lived at other addresses in the past ten years, please list beginning with most recent:
5. Do you own \_\_\_\_\_ rent \_\_\_\_\_ your home? If neither, please explain.

0.08372

EDUCATION

6. Please check one:  less than high school  
 high school  
 some college  
 B.A.  B.S.  
 M.A.  M.S.  
 other graduate degree, please describe  

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7. If you attended college or graduate school, which one, when and where?

8. What did you study?

9. Have you received any special training?  
If yes, please describe.

EMPLOYMENT

10. Are you currently employed, unemployed, retired, disabled, a homemaker, or a student?

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11. If retired, presently unemployed, or disabled, please answer the questions above for your last job(s).

12. If employed, where and how long?

Where is your employment located?

Job title, if any:

13. Do you have any supervisory responsibilities?

If yes, how many people do you supervise and what do they do?

14. Do you have a second job?

If yes, please describe what you do.